Nos. 22-506 & 22-535

In the Supreme Court of the United States

JOSEPH R. BIDEN, PRESIDENT OF THE UNITED STATES, ET AL.,
Petitioners,
v.
STATE OF NEBRASKA, ET AL.,
Respondents.

DEPARTMENT OF EDUCATION, ET AL,
Petitioners,
v.
MYRA BROWN, ET AL.,
Respondents.

On Writs of Certiorari Before Judgment to the United States Courts of Appeals for the Eighth and Fifth Circuits

BRIEF OF THE CATO INSTITUTE AND MANHATTAN INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether the Department of Education's loan-cancellation program exceeds the Secretary's statutory authority.

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INTEREST OF *AMICI CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies helps restore the principles of constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, and produces the annual *Cato Supreme Court Review*.

The Manhattan Institute (MI) is a nonprofit public policy research foundation whose mission is to develop and disseminate new ideas that foster economic choice and individual responsibility. To that end, it has historically sponsored scholarship supporting the rule of law and opposing government overreach. MI's constitutional studies program aims to restore constitutional protections for individual liberty, maintaining federalism and the separation of powers.

This case interests *amici* because the executive branch threatens individual liberty when it unilaterally enacts major policies of nationwide significance without a clear authorization from Congress.

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[1] Rule 37 statement: No part of this brief was authored by any party's counsel, and no person or entity other than *amici* funded its preparation or submission.

SUMMARY OF ARGUMENT

Suppose that a teenager's parents left town for the weekend, giving their teenager permission to use the family car for home improvement projects while they were gone. Could the teenager use the car to drive to Home Depot and bring home sealant for the front porch? Certainly. Could the teenager *sell* the car to pay for a new wing of the house? It's unlikely the parents would consider this a faithful exercise of their permission. And if the teenager protests that selling the car could technically be interpreted as falling within the letter of their instructions, that would not improve the parents' mood.

Like the teenager using the borrowed car, the executive branch exercises authority only upon the permission and instruction of the legislature, the branch charged with making the law and deciding fundamental policy questions. And like the teenager, the executive branch has a duty to follow those instructions *faithfully*, not self-servingly. Statutes are directives made by elected representatives on behalf of the people, not word puzzles for the executive branch to play with and twist into what it wants.

When we interpret instructions in everyday life, we naturally understand that permission to take drastic action is given more explicitly than permission to take less consequential actions. When someone lends her credit card to a colleague and casually asks him to pick her up something for lunch, she doesn't expect

him to spend her money on a $6,000 burger.[2] When we let a friend stay in a guest bedroom for the night and say "make yourself comfortable," we don't expect the friend to repaint the walls to match his childhood home. And when a boss tells an employee to do what's necessary to ensure a staff meeting is well-attended, a reasonable employee won't take that as a license to extort or kidnap his coworkers.

Instructions and permissions have reasonable limits that we all understand based on context. The same holds true for interpreting statutes. That is the common-sense observation behind the Major Questions Doctrine and its clear-statement rule. "Agencies have only those powers given to them by Congress." *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022). When members of Congress consider whether to vote for statutory text and grant new authority to the executive branch, they should be able to do so under the assurance that the spirit of the statute's instructions will not be ignored as in the examples above.

Courts must enforce the reasonable limitations found in both a statute's text and in its context. Doing so preserves liberty by ensuring that new powers are granted to the federal government only by the consent of the governed, acting through their elected representatives in Congress. When the executive branch exploits a statute to claim a sweeping new power that

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[2] Bryan Hood, *The World's Most Expensive Burger Has Wagyu Beef, Beluga Caviar—and Costs $6,000*, Robb Report (July 5, 2021), https://bit.ly/3WzKzia.

Congress never granted, liberty and democracy suffer. The president "cannot of himself make a law." The Federalist No. 47, at 303 (James Madison) (Clinton Rossiter ed., 1961). The Framers intentionally designed the lawmaking process to be difficult, and this process ensures that major new government powers are only granted after deliberation and consensus. *See* The Federalist No. 51 (James Madison); *see also* Jennifer Mascott, *Early Customs Laws and Delegation*, 87 Geo. Wash. L. Rev. 1388, 1449–50 (2019) ("[M]embers of [the First] Congress viewed themselves as the actors responsible for reaching finely grained policy determinations that would impact and bind the public. . . . The key role of legislative agreement reached through compromises . . . was essential to the federal separation of powers[.]").

These principles require invalidating the debt forgiveness at issue here, because Congress never granted the executive branch the authority to take such a sweeping action. In 2003, Congress gave the Secretary of Education a limited grant of authority to waive or modify provisions of federal law related to student loans. But the Secretary may only waive or modify such provisions "as may be necessary to ensure" that certain defined goals are achieved. 20 U.S.C. § 1098bb(a)(2). One of those defined goals is that "recipients of [federal] student financial assistance" who are affected by a military operation or national emergency "are not placed in a worse position financially in relation to that financial assistance

because of their status as affected individuals." *Id.* § 1098bb(a)(2)(A).

The government now argues that under this law, it has the authority to forgive billions of dollars in student loans across millions of borrowers. Specifically, it argues that: 1. The COVID-19 pandemic is a national emergency; 2. Every federal student loan borrower either lives in a COVID disaster area or has otherwise been financially affected by that emergency; 3. As a result of that emergency, some borrowers will default on their student loans once payments finally resume after a multi-year pause; and 4. Forgiving some (or all) of millions of borrowers' principal balances will ensure their overall risk of default is no worse than it was before the pandemic. Pet. Br. 34–36.

This argument runs headlong into a key limiting word in the statutory text: "necessary." Most of the steps in a Rube Goldberg machine are far from "necessary" to achieve their final aim, because a simpler and more direct method is available. The same is true here. If the government's purpose were truly to reduce the harm of more frequent defaults, there are far more direct means available to that end. These include more aggressive measures to put borrowers on income-based repayment plans and, perhaps even more straightforward, waiving some of the legal consequences of missed payments. Forgiving $400 billion of debt so that fewer people will suffer penalties for missed payments is like cutting $400 billion in income taxes so that fewer people will suffer IRS underpayment penalties.

Finally, the Major Questions Doctrine's clear-statement rule makes this an easy case. Since the action at issue here was not "necessary" to achieve the government's purported aim, the statutory text certainly does not contain a *clear* statement granting the Secretary such power. Whether to grant nationwide debt forgiveness is undoubtedly a major policy question, one that has been debated in Congress as it considered bills that would *explicitly* make that policy choice. A $400 billion debt-forgiveness plan is a major policy decision that must be made by Congress, and Congress has declined to enact that policy. The administration's debt-forgiveness action should be vacated.

ARGUMENT

I. A NATIONWIDE DEBT-FORGIVENESS PLAN IS NOT "NECESSARY" TO ACHIEVE THE GOVERNMENT'S PURPORTED GOAL

In 2003, Congress enacted the Higher Education Relief Opportunities for Students (HEROES) Act, Pub. L. No. 108-76, § 2, 117 Stat. 904-905 (20 U.S.C. § 1098bb *et seq*.). As implied by its name and timing, the law was enacted as a reaction to the Iraq War. Several of the floor statements from members of Congress reveal that a primary motivation for the Act was to ensure that military members could have their student loan payments deferred while serving their country.[3]

[3] *See, e.g.*, 149 Cong. Rec. 7922 (Apr. 1, 2003) ("[T]he HEROES Act of 2003 . . . gives the Secretary the authority . . . to ensure

But the HEROES Act extends eligibility for its benefits to more than just members of the military. The law refers more broadly to "affected individuals," and that term is defined to encompass several categories of people beyond just service members, including anyone who "resides . . . in an area that is declared a disaster area . . . in connection with a national emergency." 20 U.S.C. § 1098ee(2)(C). The federal government has declared the COVID-19 pandemic a national emergency and has also declared the entire United States a disaster area in connection with that emergency, which means, according to the government, that every resident of the United States is currently an "affected individual" as defined by the act. Pet. Br. 35.[4]

The HEROES Act allows for several potential benefits for "affected individuals." Relevant here, the Secretary of Education may "waive or modify any provision" of law applicable to federal student loans "as may be necessary to ensure that . . . recipients of student financial assistance . . . who are affected individuals are not placed in a worse position financially in relation to that financial assistance because of their

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that our troops whose lives have been disrupted suddenly, and now serve us in the Middle East and in Iraq, to make sure that . . . their loan payments are deferred until they return.") (statement of Rep. Isakson).

[4] For those student loan borrowers who reside outside the United States, the government argues that another definition of "affected individual" applies, because those borrowers "have suffered 'direct economic hardship' due to the pandemic." Pet. Br. 35 (quoting 20 U.S.C. § 1098ee(2)(D)).

status as affected individuals." 20 U.S.C. § 1098bb(a)(2)(A).

In August of 2022, the administration announced that after a nearly three-year pause on federal student loan payments, certain borrowers meeting an income cutoff would receive $10,000 to $20,000 in debt forgiveness on their principal student loan balance. *FACT SHEET: President Biden Announces Student Loan Relief for Borrowers Who Need It Most*, White House (Aug. 24, 2022).[5] While the total cost to taxpayers from this program is uncertain, the Congressional Budget Office has estimated it to be around $400 billion. Phillip L. Swagel, *Costs of Suspending Student Loan Payments and Canceling Debt*, Cong. Budget Off. (Sept. 26, 2022).[6]

To justify the legality of this action, the government argues that the requirement to pay back the principal balance of a federal student loan is a "provision" of federal law that the Secretary of Education may "waive or modify" for affected individuals. Pet. Br. 36; *but see Nebraska* Resp. Br. 44–47 (explaining why the government's action cannot plausibly be described as a waiver or modification of the provisions at issue). Thus, the argument goes, the Secretary may forgive any amount of federal student debt for any residents of a disaster area, so long as that forgiveness is "necessary to ensure that" the individuals "are not placed in a worse position financially in relation to that

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[5] *Available at* https://bit.ly/3Ja1Onw.
[6] *Available at* https://bit.ly/3Wz3EBl.

financial assistance because of their status" as residents of a disaster area.

That leaves the question whether loan forgiveness for some or all U.S. residents would in fact ensure that this goal is achieved. The government argues that it would, on the theory that loan forgiveness will lower overall default rates to where they would have been but for the pandemic. The government argues that "historical data about borrowers who transitioned back to repayment after periods of forbearance, including after other emergencies," showed that such borrowers are typically at "elevated risk of delinquency and default." Pet. Br. 9. Under the government's reasoning, reducing the total principal balance for certain borrowers would have the effect, among other things, of lowering their monthly payments and reducing their likelihood of default. J.A. 240–41.

The flaw in this reasoning, however, is that the government has failed to plausibly explain how debt forgiveness could be "necessary" to the Department's goal. Even presuming, for the sake of argument, that reducing the likelihood of defaults is a legitimate statutory goal and that some increase in defaults would be caused by the pandemic itself (as opposed to the Department's own payment pause), the government still would have several less drastic and more targeted means at its disposal.

First, as the government itself acknowledges, "borrowers have other options to reduce monthly payments, like income-driven repayment (IDR) plans."

J.A. 241. "Borrowers using income-driven repayment plans have significantly lower rates of default and delinquency than borrowers who do not use those plans." J.A. 242. And "[m]any borrowers who are eligible for IDR plans are not yet enrolled." J.A. 241. Initiatives to increase enrollment in IDR plans would thus make progress toward the same ends (reducing defaults) using far less economically consequential means.

Remarkably, the government's only response is that spending $400 billion or more on debt forgiveness could have the collateral benefit of providing "visibility" that "will likely attract these borrowers to apply in numbers that [the Department's] efforts to increase enrollment in IDR have not." J.A. 241. But the Department provides no explanation why additional outreach or advertising could not achieve the same increase in visibility at a small fraction of the cost.[7] Nor is there any explanation why targeted suggestions or even automatic enrollment in IDR plans could not be employed for borrowers who have missed payments and are at risk of default.

Additionally, the government ignores an even more direct solution for ameliorating any harms from increased defaults. It notes that borrowers who "go delinquent or default on their student loans suffer substantial negative penalties." J.A. 229. But most

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[7] *See* Jed Shugerman, *Biden's Student-Debt Rescue Plan Is a Legal Mess*, The Atlantic (Sept. 4, 2022), https://bit.ly/3J53FK9 ("Some nonpartisan groups estimate a cost of $500 billion over a decade. This size is inconsistent with a COVID-tailored relief program.").

(perhaps all) of these negative penalties are legal ones that are *themselves* presumably waivable under the same provision of the HEROES Act that the government relies on to enact debt forgiveness. The government's premise is that the missed payments are harmful because of their consequences, such as "los[ing] access to affordable repayment options and flexibilities" and having "balances become due immediately." J.A. 239. But if that is so, then the administration could reduce the harm of missed payments by temporarily *waiving those consequences*. Showing grace to those particular borrowers who will in fact miss payments is a far more straightforward solution than preemptively spending $400 billion to lower those payments for millions more borrowers than will need the help.[8]

For these reasons, even if every other (dubious) step in the administration's argument were sound, the government has failed to offer a plausible explanation why a sweeping nationwide debt relief program is "necessary" to achieve the aim of reducing the negative consequences of missed payments and increased defaults. The text of the HEROES Act passed by

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[8] *See* Ilya Somin, *Biden's Student Loan Debt Cancellation is a Trumpian Abuse of Emergency Powers,* Volokh Conspiracy (Sept. 2, 2022), https://bit.ly/3iUXLRh. ("For the overwhelming majority [of borrowers], there is simply no proof that Covid is preventing them from paying back their loans or even making it significantly harder to do so."); *see also* Shugerman, *supra* ("[I]t is far from obvious that we are still in a national emergency in August 2022, and it is even further from obvious that everyone making less than $125,000 is still in a 'worse position' specifically because of COVID.").

Congress does not grant authority for the administration's debt-forgiveness plan.

II. THE MAJOR QUESTIONS DOCTRINE MAKES THIS AN EASY CASE

This Court has recently stayed or invalidated three executive actions that were based on novel and expansive readings of longstanding laws: OSHA's "vaccine or test" mandate, the CDC's eviction moratorium, and the EPA's greenhouse-gas-emission restrictions. One common theme of these decisions is particularly relevant here: the Court's justified skepticism of an agency suddenly discovering novel and sweeping powers that it had never claimed before. "[T]he want of assertion of power by those who presumably would be alert to exercise it" is "significant in determining whether such power was actually conferred." *West Virginia*, 142 S. Ct. at 2610 (quoting *FTC v. Bunte Brothers, Inc.*, 312 U.S. 349, 352 (1941)). Because the Department of Education has made just such an implausible discovery of a consequential new power here, this is a Major Questions case.

The breadth and novelty of the claimed power was at the heart of this Court's analysis when it stayed the nationwide "vaccine or test" mandate imposed by the Occupational Safety and Health Administration. *NFIB v. DOL, OSHA*, 142 S. Ct. 661 (2022). As the Court explained, the statute at issue consistently addressed only workplace hazards; it did not "address[] public health more generally, which falls outside of OSHA's sphere of expertise." *Id.* at 665. Noting that a

vaccine mandate is unlike the regulations OSHA typically imposes, the Court held that such a mandate "is simply not 'part of what the agency was built for.'" *Id.* Supporting this view of OSHA's powers was the fact that OSHA had "never before adopted a broad public health regulation of this kind." *Id.* at 666.

The Biden administration argued that COVID-19 was, literally speaking, a hazard in the workplace (among many other places), but the Court rejected this argument: "Permitting OSHA to regulate the hazards of daily life—simply because most Americans have jobs and face those same risks while on the clock—would significantly expand OSHA's regulatory authority without clear congressional authorization." *Id.* at 665. In the same way, allowing the Department of Education to take the extraordinary step of cancelling billions of dollars in debt whenever a national emergency might put some Americans at greater risk of student loan default would significantly expand that agency's previously understood authority.

The Court expressed a similar skepticism of unprecedented claims of agency power when it stayed the nationwide eviction moratorium imposed by the Centers for Disease Control. *Ala. Ass'n of Realtors (AAR) v. HHS*, 141 S. Ct. 2485 (2021) (per curiam). That moratorium relied on a statutory authorization to impose regulations preventing the interstate spread of disease. As the Court noted, the CDC had "imposed a nationwide moratorium on evictions in reliance on a decades-old statute that authorizes it to implement measures like fumigation and pest extermination." *Id.*

at 2486. Again emphasizing the uniqueness of the action, the Court recounted that the law at issue had "rarely been invoked—and never before to justify an eviction moratorium." *Id.* at 2487.

This Court also stressed the tenuousness of the connection between housing regulations and the agency's focus (public health), describing the chain of logic necessary to justify the moratorium as follows: "If evictions occur, some subset of tenants might move from one State to another, and some subset of that group might do so while infected with COVID-19." *Id.* at 2488. This Court rejected the administration's reliance on this "downstream connection between eviction and the interstate spread of disease." *Id.* Similarly here, the Department of Education's theory is based entirely on a downstream connection between debt relief and student loan defaults, a theory under which the Department claims it can exercise vastly more power than it needs to address the specific alleged problem.

Finally and most recently, this Court returned to the theme of novelty when it struck down the EPA's claim of authority to impose a regulation that would have limited the amount of electricity produced by coal plants nationwide. *West Virginia*, 142 S. Ct. 2587. The Court once again rejected the government's reliance on an extended chain of cause and effect to justify the newfound power. EPA claimed that it could place limits on the total number of coal plants nationwide since one *effect* of such a mandate would be to "reduce air pollution from power plants, which is EPA's bread and

butter." *Id.* at 2613. But the Court rightly rejected the notion that an agency can claim breathtaking new authority simply because it might be one means of achieving more traditional agency goals. The Court pointed out by analogy that it "would not expect the Department of Homeland Security to make trade or foreign policy even though doing so could decrease illegal immigration." *Id.* at 2613.

As the Court noted in *West Virginia*, the government's discovery of a power to enact nationwide debt relief "conveniently enabled it to enact a program" that "'Congress considered and rejected' multiple times." *Id.* at 2614 (citations omitted). *See Nebraska* Resp. Br. at 6 ("Congress considered—but rejected—a COVID–relief bill that would have discharged up to $10,000 in student–loan debt for some borrowers."); *see also* Elizabeth Goitein, *Biden Used 'Emergency Powers' to Forgive Student Debt? That's A Slippery Slope*, Wash. Post (Sept. 1, 2022) ("Since March 2020, several lawmakers have introduced bills that would forgive $10,000 or more in student debt. Although one passed the House, none has made it through the Senate. In other words, Congress has chosen not to pursue this policy.").[9]

While not determinative, this history is evidence that the policy question is a major one, since it is one that Congress gave its attention to. *See West Virginia*, 142 S. Ct. at 2620–21 n.4 (Gorsuch, J., concurring) (the existence of failed legislation "help[s] resolve the antecedent question whether the agency's challenged

[9] *Available at* https://wapo.st/3H2zjW7.

action implicates a major question”). And in addition, this history also strongly suggests that the administration’s legal reasoning is outcome-oriented and pretextual. All evidence indicates that the government suddenly discovered the power to enact debt relief not because it is legally plausible but instead because it is politically desirable.[10] “‘The importance of the issue,’ along with the fact that the same basic scheme [the Department of Education] adopted ‘has been the subject of an earnest and profound debate across the country, . . . makes the oblique form of the claimed delegation all the more suspect.’” *West Virginia*, 142 S. Ct. at 2614 (quoting *Gonzales v. Oregon*, 546 U.S. 243, 267–68 (2006)).[11]

Thus, for many of the same reasons that each of the above three cases were Major Questions cases, this is also a Major Questions case. The HEROES Act has

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[10] *See* Somin, *supra* (“In reality, the administration’s emergency rationale here is blatantly pretextual, ... Under the guise of addressing the Covid emergency, Biden is seeking to achieve a longstanding left-wing policy goal that he couldn’t push through Congress.”); Shugerman, *supra* (“[T]he administration’s COVID explanation seems to be just a pretext for a broader program. The Biden administration offers no hint that its program would focus on COVID or proof of COVID causation, because COVID is not the real reason for sweeping debt relief.”); Goitein, *supra* (“Against this backdrop, Biden’s action looks less like a temporary exercise of power to address a sudden, fast-moving crisis and more like a work-around to implement a long-term policy that lacks the necessary support in Congress.”).

[11] *See also* Goitein, *supra*, (“[U]sing [emergency powers] to get around Congress, when Congress has considered a course of action and rejected it, is a clear misuse of emergency powers.”).

never before been invoked to enact student debt forgiveness, let alone $400 billion of debt forgiveness. Indeed, until the government abruptly announced in August of 2022 that it would rely on the HEROES Act for that authority, there had been no serious discussion that this statute could bear the legal weight of such a plan. And just as in the above three cases, the Department of Education here asserts for itself a novel and highly consequential power simply because one of the (many, massive) effects of exercising that power might be a legitimate agency goal (reducing defaults). The result is an assertion of "highly consequential power beyond what Congress could reasonably be understood to have granted." *West Virginia*, 142 S. Ct. at 2609.

Because this is a Major Questions case, this is an easy case. "[T]he Government must—under the major questions doctrine—point to 'clear congressional authorization'" to enact nationwide student debt forgiveness. *Id.* at 2614 (quoting *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)). But as noted in the previous section, the statutory text does not include any authorization for such an action, let alone a clear authorization. Even if the question whether $400 billion in debt relief is "necessary" to reduce the harms of default were a close one, there is no doubt that it falls short of the clear-statement standard. Just as the word "system" could not bear the weight of a nationwide cap-and-trade emissions scheme in *West Virginia*, the HEROES Act's "vague statutory grant is not close to the sort of clear authorization required by [this Court's] precedents." *Id.* at 2614.

III. THE DEBT-FORGIVENESS PLAN IS BAD POLICY THAT WILL HAVE BAD CONSEQUENCES

To be sure, the administration's debt-forgiveness plan would be illegal whether it were good policy or bad. The right of the people to make major policy decisions through their elected representatives is equally usurped whether a statute is misused to achieve the ends of a Democratic administration or a Republican one, whether those ends are conservative or progressive, and whether wise or unwise.[12] It would be equally illegal if a Republican president used a statutory authority to "reduce average IRS audit times" as a pretext to unilaterally cut $400 billion in federal income taxes, especially if that action came soon after a bill proposing the same policy failed in Congress.

Nonetheless, the administration's debt-forgiveness plan is indeed bad policy that would have serious and harmful consequences.[13] In this instance, the system of checks that the Framers designed has done its job to winnow out a harmful policy choice. If the administration were allowed to ignore Congress's

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[12] *See* Shugerman, *supra* ("No matter which party is in power, no matter how well-intentioned a policy is, this approach is a dangerous one, and the Biden administration should know better."); Goitein, *supra* ("[S]idelining Congress through emergency powers means sidelining the checks and balances that safeguard our liberties and democracy.").

[13] *See generally* Neal McCluskey, *Biden Student Debt Cancellation Proposal: Even Worse than Expected*, Cato at Liberty (Aug. 24, 2022), https://bit.ly/3R50p3w.

judgment and enact the rejected policy anyway, the benefits of that system of checks would be nullified. As this case demonstrates and as the Framers knew, unilateral policy is often bad policy.

Further, the scale of the negative effects that are likely to result from the debt-forgiveness plan serves to underscore—if there was any doubt—that the action is a major policy decision to which the Major Questions Doctrine applies.

A. Student Debt Forgiveness Would Likely Lead to Price Inflation

One of the biggest problems in higher education is its rapidly increasing price, rising far faster than the rate of inflation. The inflation-adjusted tuition, fees, room and board at four-year, nonprofit private colleges has ballooned from $27,720 in the 1990–91 school year to $51,690 in the 2021–22 school year, an 86 percent increase. *See* Neal McCluskey, *Top Five Reasons Federal Student Debt Cancellation Is a Bad Idea*, Cato at Liberty (Aug. 23, 2022).[14] At public four-year institutions, that cost rose from $10,430 to $22,690, a 118 percent increase. *Id.* And this trend has been accompanied by a huge increase in aid per student.

Much research has shown that aid fuels college price inflation, including a Federal Reserve Bank of New York finding that for every 1 dollar increase in "subsidized" student loans, colleges raise their prices 60 cents. David O. Lucca et al., *Credit Supply and the*

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[14] *Available at* https://bit.ly/3Hr0Txx.

Rise in College Tuition: Evidence from the Expansion in Federal Student Aid Programs, 32 Rev. Fin. Stud. 423 (2018). Mass cancellation will likely incentivize much greater inflation as neither colleges nor prospective students will believe future loans will have to be repaid. The most likely result will be students taking out even greater amounts of "subsidized" loans than they have before, leading to even larger increases in college price tags. *See, e.g.*, Jenna A. Robinson, *The Bennett Hypothesis Turns 30*, James G. Martin Ctr. for Acad. Renewal (2017) (summarizing economist Howard Bowen's hypothesis that there is "virtually no limit to the amount of money colleges and universities can spend").

B. Student Debt Forgiveness Does Not Target Those Most in Need of Aid

People who go to college, and especially who get degrees, typically garner big earnings increases and job security that makes them among the least in need of help. The average person with a bachelor's degree will earn an estimated $1.2 million more over their lifetime than someone topping out at a high school diploma. McCluskey, *Top Five Reasons*, *supra*. For someone with a graduate degree—and student debt is disproportionately taken on for graduate study—that earnings premium rises to between $1.6 and $3.1 million. *Id.*

In addition to huge earnings increases, people who attended college have much greater job security than those who did not, and this benefit was especially

stark during COVID-19 lockdowns. In April 2020, the unemployment rate only hit 8.4 percent for college graduates, versus 17.6 percent for Americans topping out at a high school diploma and 21.1 percent for workers with less than that. U.S. Bureau of Labor Statistics, *Unemployment Rates for Persons 25 Years and Older by Educational Attainment* (last visited Feb. 2, 2023).[15]

There is no reason that people in such a good financial position should not repay taxpayers, roughly two-thirds of whom do not have bachelor's degrees. The debt-forgiveness plan will "provide a windfall for those who don't need it—with American taxpayers footing the bill." Editorial, *Biden's Student Loan Announcement Is a Regressive, Expensive Mistake*, Wash. Post (Aug. 24, 2022).[16]

C. Student Debt Forgiveness Comes at an Enormous Cost to Taxpayers

Just how much will taxpayers be on the hook for? Exactly how expensive the debt forgiveness program will be is uncertain—it depends on how many people apply, how many would have used other forgiveness programs, and more—but estimates range from the administration's optimistic figure of about $380 billion up to a Penn Wharton estimate of as much as $520 billion. *See* Neal McCluskey, *Biden's Student-Debt Cancellation Refutes Itself*, National Review (Online) (Oct.

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[15] *Available at* https://bit.ly/3JiqcD8.

[16] *Available at* https://wapo.st/3Hr2Slt.

19, 2022).[17] Cato's Neal McCluskey estimates a cost of roughly $427 billion, which would be nearly 36-times greater than the federal government spent on Head Start in 2022. *McCluskey*, *Worse than Expected*, *supra*. This would also be nearly two-and-a-half times larger than the U.S. Army's 2022 budget. *Id.*

Given the enormous financial cost of this program relative to others in the federal budget, it is not surprising that the American taxpayers' representatives in Congress refused to assent to such a plan. That was a policy decision that the administration should have respected.

CONCLUSION

The government's student loan debt-forgiveness plan is not authorized by the HEROES Act of 2003 and should be vacated.

Respectfully submitted,

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[17] *Available at* https://bit.ly/3J9MfvT.